

FILED ENTERED
LODGED RECEIVED

NOV 01 2006 DB

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

LILIAN ILETO, on behalf of the Estate
of JOSEPH ILETO,

Plaintiffs,

Vs.

LOANER TOO, a/k/a, LOANER II,
LOANER, INC., LOANER TWO
PAWNSHOP, LOANER PAWN SHOP

Defendant.

CV^{No.}06-1583 Jce

COMPLAINT FOR DAMAGES

(Clerk's Action Required)

JURY TRIAL DEMANDED

I. INTRODUCTION

1.1 Plaintiff Lilian Iletto is the mother of deceased Joseph Iletto, and has petitioned the Superior Court for Los Angeles County, where she resides, to be appointed the Administrator for the Estate of Joseph Iletto.

1.2 This case arises under the wrongful death and survivorship statutes of the State of Washington. It is brought against Loaner Too a/k/a Loaner II, Loaner, Inc., Loaner Two, Loaner Two Pawnshop, Loaner Pawn shop and its agents, employees and owners, (hereinafter referred to as "Loaner") for its negligent failure to adequately

COMPLAINT FOR DAMAGES

1

Law Offices of Michael Withey, PLLC
601 Union Street, Ste. 4200
Seattle, WA 98101
206-405-1800



ORIGINAL

SFA 5030 no seminars

1 investigate the criminal and mental health history of one Buford Furrow, Jr. to whom it
2 supplied a firearm, the negligent failure to require him to complete and submit mandatory
3 federal firearm reporting forms, the negligent failure to comply with state and federal
4 firearms laws, the negligent failure to adequately train and supervise its employees in the
5 proper manner of complying with state and federal firearms law, and other negligent acts
6 alleged herein or as will be proven at trial. As a proximate result of such negligence
7 Plaintiff's decedent Joseph Iletto was killed by Buford Furrow using the firearm supplied
8 to him by Loaner.
9

10 II. PARTIES, JURISDICTION AND VENUE

11 2.1 Plaintiff Lilian Iletto has petitioned the Superior Court for Los Angeles
12 County, California, where she resides, and where decedent Joseph Iletto resided prior to
13 his death, to be appointed as the Administrator of the Estate of Joseph Iletto. At such time
14 when the Los Angeles County Superior Court appoints Lilian Iletto as the Administrator
15 of the Estate, Plaintiff will seek to amend this Complaint to so state.
16

17 2.2 Defendant Loaner Too, aka Loaner II, Loaner, Inc., Loaner Two, Loaner
18 Two Pawnshop, Loaner Pawn Shop ("Loaner") is in the business of pawn shop
19 operations, and the sale of firearms, in Everett, Snohomish County, Washington.
20

21 2.3 Diversity jurisdiction is vested in this court by virtue of the fact in that the
22 Plaintiff and Defendant are residents of different states and the amount in controversy
23 exceeds the sum of \$75,000 (Seventy-five thousand Dollars).
24

1 2.4 Venue exists in this district because the negligent acts committed by
2 Loaner were principally committed within the Western District of Washington.

3
4 **III. STATEMENT OF FACTS**

5 3.1 Plaintiff's decedent and son Joseph Iletto, 39, was a mail carrier working
6 for the United States Postal Service working in Chatsworth in Los Angeles County,
7 California. He was of Filipino descent. Prior to his death, he lived with his mother, was
8 an excellent postal letter carrier, and had an avid interest in chess. His mother, Lilian
9 Iletto, was "financially dependant" upon Joseph Iletto as that term is defined under
10 Washington statutes and law.

11
12 3.2 On August 10, 1999 Joseph Iletto was working his assigned route as a mail
13 carrier in the Chatsworth area of the San Fernando Valley of California, when he was
14 approached by Buford Furrow, Jr. Mr. Iletto got out of his postal vehicle. Furrow at the
15 time was carrying a concealed weapon, a 9mm model Glock 26 firearm, Serial Number
16 BSM901US, which he had acquired from Loaner.

17
18 3.3 Using the ability to conceal the Glock firearm from Mr. Iletto, Mr. Furrow
19 asked Mr. Iletto if he would mail a letter for him in order to induce Mr. Iletto to approach
20 him. When Mr. Iletto was within firing range (approximately 25 feet away) Mr. Furrow
21 pulled the Glock firearm from its place of concealment and shot him twice in the front of
22 his body. Mr. Iletto then turned to run away from Mr. Furrow and seek shelter when Mr.
23 Furrow then shot him seven times in the back and head, which caused him fatal injuries.

1 **IV. CAUSE OF ACTION FOR NEGLIGENCE**

2 4.1 Plaintiff sues under the laws of the State of Washington including for
3 wrongful death and survivorship under RCW 4.20.010 *et. seq.* and RCW 4.20.046.

4 4.2 On or about May 21, 1999, Buford Furrow was convicted of second
5 degree assault, a felony, in the State of Washington. While he was in custody awaiting
6 trial for this offense, he was involuntarily committed to a mental hospital. He was
7 sentenced to jail. After serving his in jail time he was released on parole. On information
8 and belief Furrow had previously pawned a Glock Model 26 pistol, serial number
9 BSM901US, to Loaner in Everett, Washington. Under Washington state law, WA REV
10 CODE Section 9.41.120, no person other than a duly licensed firearms dealer shall make
11 any loan secured by a mortgage, deposit or pledge of a pistol. On information and belief,
12 at the time Furrow pawned the Glock 26, and at all times relevant to this complaint,
13 Loaner was a federally licensed and state licensed firearms dealer and subject to all the
14 federal and state statutes regulating firearms dealers.
15

16
17 4.3 Some time subsequent to pawning the Glock 26, Furrow returned to
18 Loaner and received back the Glock 26. At the time of delivering the Glock 26 back to
19 Furrow, Loaner was required by federal and state law to fill out those portions of the
20 Federal Firearms Transaction Records, Form 4473. This form was required to be filled
21 out by the licensed dealer transferring or delivering the pistol. Loaner was required by
22 federal and state law to have the person receiving the pistol in this case, Mr. Furrow, fill
23 out other portions of the 4473 in the dealer's presence. The relevant state and federal
24

1 statutes related to the 4473 form are: 18 U.S.C. § 923(g)(1)(A) and WA REV CODE
2 9.41.090(5) and 9.41.110(9)(a). All the foregoing statutes are state and federal statutes
3 applicable to the sale or marketing of firearms within the meaning of 15 USC Section
4 7903(5)(A)(iii).

5
6 4.4 At the time of delivering the pistol back to Furrow, Loaner was not
7 allowed under federal law to fill in any portion of the 4473. Rather it was required to be
8 filled out by the person receiving the pistol. Loaner was not allowed by state and federal
9 law to transfer a pistol to a person whom Loaner had reasonable cause to believe was
10 convicted of a felony; and was not allowed under federal and state law to transfer a pistol
11 to a person whom the dealer knows or has reasonable cause to believe has been
12 involuntarily committed for mental health treatment. The relevant state and federal
13 statutes are found at 18 U.S.C. § 923(g)(1)(A), 18 U.S.C. § 922(d)(1) and (4), WA REV
14 CODE 9.41.080 and each of the foregoing statutes is a statute applicable to the sale or
15 marketing of firearms within the meaning of 15 USC 7903(5)(A)(iii).

16
17 4.5 At the time Furrow came to retrieve the Glock 26 from Loaner, a manager
18 of Loaner, David McGee or another employee of Loaner, acting on behalf of and within
19 the scope of their employment for Loaner, knowing or having reasonable cause to believe
20 Furrow was ineligible to receive the pistol because he was adjudicated mentally
21 incompetent within the meaning of 18 U.S.C. § 922(d)(4) and Wash Rev. Code
22 9.41.040(2)(a)(ii) having been involuntarily committed to a mental hospital; and/or had
23 been convicted of a felony making him ineligible to possess or purchase a firearm under
24

1 state and federal law, nevertheless negligently transferred and delivered the Glock 26 to
2 Furrow in violation of 18 U.S.C. § 922(d) and Wash Rev. Code 9A.1.080.

3 4.6 In addition, on information and belief, Plaintiff alleges that the Loaner
4 employee who delivered the pistol to Furrow or some other Loaner employee aware of
5 the delivery of the pistol to Furrow, knowing or having reasonable cause to believe that
6 delivery of the Glock 26 to Furrow was not allowed by state and federal law, at some
7 time forged that portion of the 4473 required by law to be prepared and signed by the
8 person to whom the pistol is delivered. Such person forged Furrow's signature, back
9 dated the Form 4473, and misstated his place of birth such person knew or should have
10 known that Furrow was required to fill in that portion of the Form 4473 in the presence of
11 the dealer as required by law.
12

13 4.7 Plaintiff alleges Loaner negligently failed to comply with legal
14 requirements in delivering the pistol to Furrow as described in this complaint, in violation
15 of the cited statutes, all of which are statutes applicable to the sale or marketing of
16 firearms within the meaning of 15 USC Section 7903(5)(A)(iii); and therefore this
17 lawsuit is outside the purview of 15 USC Sections 7901 - 7903, known as the Protection
18 of Lawful Commerce in Arms Act.
19

20 4.8 Loaner also negligently failed to adequately train, monitor and supervise
21 its employees in the proper performance of their legal duties in transferring firearms, and
22 with respect to federal and state laws applicable to firearms dealers.
23

1 4.9 As a proximate result of the negligence of defendant as alleged herein, Mr.
2 Furrow was able to conceal the Glock firearm described above, in murdering plaintiff's,
3 decedent Joseph Iletto. As a proximate result of the defendant's negligence as alleged
4 herein, Mr. Iletto was shot and killed by Furrow using the Glock firearm. Mr. Iletto and
5 his Estate suffered pre-death pain and suffering (including in his vain attempt to flee Mr.
6 Furrow), the loss of life expectancy, the loss of enjoyment of life, the loss of income, the
7 loss of financial support to Lilian Iletto, and any and all other injuries and damages
8 allowed by law.
9

10 **V. FRAUDULENT CONCEALMENT**

11 5.1 Loaner fraudulently concealed from plaintiff the negligence/wrongful
12 death and survivorship causes of action by falsely filling in and forging the signature of
13 Buford Furrow on the Form 4473, which is attached as Exhibit 1 to this Declaration. On
14 information and belief, Loaner forged the signature of Mr. Furrow and inappropriately
15 filled in the other information contained on this form (some of which was inaccurate)
16 after Mr. Furrow had committed the homicide of Joseph Iletto and Loaner became aware
17 of Mr. Furrow's involvement in a crime spree in the Los Angeles area.
18

19 5.2 In addition, the defendant filed this forged Form 4473 as an exhibit to
20 pleadings in state court in support of its legal position that the court had no jurisdiction
21 over Lilian Iletto's lawsuit brought in the State of California. That lawsuit was dismissed
22 without prejudice due to lack of personal or long-arm jurisdiction over Loaner at the
23 urging of Loaner.
24

5.3 By such fraudulent concealment the defendant sought to mislead the plaintiff, her family and the courts in California to believe that what is attached as Exhibit 1 to this Complaint was a true and accurate copy of a U.S. Treasury Department Form 4473 signed by Mr. Furrow. In fact, such document was not signed by Mr. Furrow or filled out by him, as Plaintiff only discovered in 2005. Mr. Furrow's signature is a forgery, the date of the transaction is misstated, and Mr. Furrow's birthplace is misstated. Each of these actions were fraudulent acts designed to mislead Plaintiff and the authorities. These are all fraudulent acts which Plaintiff did not discover or in the exercise of reasonable diligence would not have discovered within three years of the date of filing of this Complaint.

VI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff asks for relief as follows:

(1) all special damages including loss of income, loss of economic value of the estate, medical bills, funeral expenses, counseling costs, loss of the benefit of the financial and emotional support to all the applicable statutory beneficiaries to whom such support was provided, and any and all other special damages allowed by law;

(2) for all general damages allowed under the Washington State law allowing wrongful death and survivorship actions including but not limited to the pre-death pain and suffered by Joseph Iletto, loss of life expectancy, loss of the enjoyment of life, the loss of love, companionship and affection of his surviving family, and any and all such other general damages that are allowed by law;


COMPLAINT FOR DAMAGES

1 (3) for costs of suit and attorneys fees that are allowed by law;

2 (4) for such other relief as the court deems just.

3
4 DATED this 1 day of November, 2006.

5
6
7 LAW OFFICES OF MICHAEL WITHEY, PLLC

8
9 
10 Michael E. Withey, WSBA # 4787
11 Attorney for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24

25 COMPLAINT FOR DAMAGES

9

Law Offices of Michael Withey, PLLC
601 Union Street, Ste. 4200
Seattle, WA 98101
206-405-1800

EXHIBIT 1

OMB NO. 1512-0123

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - OVER-THE-COUNTER	TRANSFEROR'S TRANSACTION SERIAL NUMBER 62162
---	---

NOTE: Prepare in original only. All entries on this form must be in ink. See Important Notices, Definitions and Instructions.

SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER)

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) FURROW BU FORD		2. GENDER <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	3. HEIGHT 5'8"	4. WEIGHT 200	5. RACE W
6. RESIDENCE ADDRESS (No., Street, City, County, State, ZIP Code) 638 OLD PACIFIC HWY WA. OLYMPIA		7. DATE OF BIRTH MONTH 11 DAY 25 YEAR 61		8. PLACE OF BIRTH (City, State or Foreign Country) OLYMPIA WA	
9. CERTIFICATION OF TRANSFEREE (Buyer) - Questions 9 through 14 must be answered with a "yes" or "no" marked in the box at the right of the question.					
a. Are you the actual buyer of the firearm indicated below? If you answer "no" to this question the dealer cannot transfer the firearm to you. (See Important Notice 1.)		Y		N	
b. Are you under indictment or information in any court for a crime for which the judge could imprison you for more than one year? An information is a formal accusation of a crime made by a prosecuting attorney.		N		N	
c. Have you been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence? (See Important Notice 3 and EXCEPTION.)		W		N	
d. Are you a fugitive from justice?		N		N	
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance?		N		W	
f. Have you ever been adjudicated mentally defective or have you been committed to a mental institution?		Y		N	
g. Have you been discharged from the Armed Forces under dishonorable conditions?		N		N	
h. Are you an alien illegally in the United States?		N		N	
i. Have you ever renounced your United States citizenship?		N		N	
j. Are you subject to a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such partner? (See Important Notice 4 and Definition 4.)		N		N	
k. Have you been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim. (See Important Notice 5 and Definition 5.)		N		W	
l. Are you a citizen of the United States?		Y		Y	
m. What is your State of residence? WA (State) If you are not a citizen of the United States, you have a State of residence only if you have resided in the State for at least 90 days prior to the date of this sale. (See Definition 6.)					

I CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT. I UNDERSTAND THAT A PERSON WHO ANSWERS "YES" TO ANY OF THE QUESTIONS IS PROHIBITED FROM PURCHASING OR POSSESSING A FIREARM. I ALSO UNDERSTAND THAT THE MAKING OF A FALSE ORAL OR WRITTEN STATEMENT ON THE EXISTENCE OF ANY FALSE OR MISREPRESENTED IDENTIFICATION WITH RESPECT TO THIS TRANSACTION IS A CRIME PUNISHABLE AS A FELONY. I FURTHER UNDERSTAND THAT MY REPETITIVE PURCHASE OF FIREARMS FOR THE PURPOSE OF RESALE FOR LIVELIHOOD AND PROFIT WITHOUT A FEDERAL FIREARMS LICENSE IS A VIOLATION OF LAW. (SEE IMPORTANT NOTICE 8)

TRANSFEREE'S (Buyer's) SIGNATURE

DATE

10-12-98

SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER)

THE PERSON DESCRIBED IN THIS SECTION HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER:

9. TYPE OF AND NUMBER ON IDENTIFICATION (Driver's license or Identification which shows name, date of birth, place of residence, and signature. Purchaser who are aliens must provide a valid government-issued photo identification. See Instructions to Transferor 1 and 2.)	10. TYPES AND DATES OF ADDITIONAL IDENTIFICATION REQUIRED FOR ALIENS (e.g., utility bill or lease agreement). See instruction to Transferor 3.
--	--

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transfer, or otherwise dispose of the firearm(s), described below and on the back, to the person identified in Section A.

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)
1. PISTOL	26	9mm	185M 9101	SLICK
2.				
3.				
4.				

Complete ATF Form 4 for multiple purchases of handguns (See Instructions to Transferor 7.)

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used.) LOANER INC. 1810 Highway 400 Everett, WA 98201	17. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used.) 991031021028142 EVERETT WA 98203 425 353-1475
--	--

18. TRANSFEROR'S (Seller's) SIGNATURE 	19. TRANSFEROR'S TITLE WM	20. TRANSACTION DATE 10/12/98
---	-------------------------------------	---

262256